

102 KAR 1:230. Limitations on benefits.

RELATES TO: KRS 161.611, 26 C.F.R. 1.415, 26 U.S.C. 125, 132(f)(4), 402, 414, 415, 417, 457, 3401, 6041, 6051, 6052

STATUTORY AUTHORITY: KRS 161.310 (1), 161.716

NECESSITY, FUNCTION AND CONFORMITY: KRS 161.310(1) requires the board of trustees to promulgate administrative regulations for the administration of the funds of the retirement system and for the transaction of business. KRS 161.716 requires the board of trustees to promulgate administrative regulations as are necessary to remove any conflicts with federal laws and to protect the interests of the members and survivors of members of the retirement system. This administrative regulation establishes the limitations on benefits required by 26 U.S.C. 415.

Section 1. Definitions. (1) "415(b) limit" means the limitation on benefits established by 26 U.S.C. 415(b).

(2) "415(c) limit" means the limitation on annual additions established by 26 U.S.C. 415(c).

(3) "Annual benefit" means, for purposes of the 415(b) limit, a benefit payable annually in the form of a straight life annuity (without ancillary benefits) without regard to the benefit attributable to after-tax employee contributions (except pursuant to 26 U.S.C. 415(n)) and to roll-over contributions (as defined in 26 U.S.C. 415(b)(2)(A)). The "benefit attributable" is determined in accordance with 26 C.F.R. 1.415(b).

(4) "Defined benefit dollar limitation" means \$160,000, as adjusted, effective January 1 each year, in the manner established by the Secretary of the United States Treasury pursuant to 26 U.S.C. 415(d), and payable in the form of a straight life annuity. A limitation as adjusted under 26 U.S.C. 415(d) applies to limitation years for which the adjustment applies.

(5) "Limitation year" means the calendar year.

(6) "Nonqualified service credit" means, effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, permissive service credit other than that allowed with respect to:

(a) Service as an employee of the Government of the United States or any state, agency, or political subdivision thereof (other than military service or service for credit that was obtained as a result of a repayment described in 26 U.S.C. 415(k)(3);

(b) Service as an employee, other than as an employee described in paragraph (a) of this subsection, of an education organization described in 26 U.S.C. 170(b)(1)(A)(ii) that is a public, private, or sectarian school that provides elementary education or secondary education through grade twelve (12), or a comparable level of education as determined pursuant to the applicable law of the jurisdiction in which the service was performed;

(c) Service as an employee of an association of employees described in paragraph (a) of this subsection; or

(d) Military service, other than qualified military service pursuant to 26 U.S.C. 414(u), recognized by the retirement system.

Section 2. Adjustments and Limitations. (1) If the member has fewer than ten (10) years participation in the plan, the defined benefit dollar limitation shall be multiplied by a fraction.

(a) The numerator shall be the number of years (or part thereof) of participation in the plan, and the denominator shall be ten (10).

(b) The reduction established in this subsection shall not apply to preretirement death and disability benefits.

(2) If the benefit of a member begins prior to age sixty-two (62), and because the plan pro-

vides an immediately commencing straight life annuity payable both at age sixty-two (62) and the age of benefit commencement, the defined benefit dollar limitation shall be the lesser of paragraph (a) or (b) of this subsection:

(a) The actuarial equivalent (at the earlier age) of the defined benefit dollar limitation (adjusted pursuant to subsection (1) of this section if necessary), with actuarial equivalence computed using a five (5) percent interest rate and the applicable mortality table for the annuity starting date as specified by the system actuary (and expressing the member's age in completed calendar months as of the annuity starting date); or

(b) The defined benefit dollar limitation (adjusted pursuant to subsection (1) of this section if necessary) multiplied by a ratio of the annual amount of the immediately commencing straight life annuity pursuant to the plan at the member's annuity starting date to the annual amount of the immediately commencing straight life annuity pursuant to the plan at age sixty-two (62), both determined without applying the 415(b) limit.

1. Any decrease in the defined benefit dollar limitation determined in accordance with this subsection shall not reflect a mortality decrement if benefits are not forfeited upon the death of the member.

2. If any benefits are forfeited upon death, the full mortality decrement shall be taken into account.

(3) The reductions provided for in subsection (2) of this section shall not apply to preretirement disability benefits or preretirement death benefits.

(4) If the benefit of a member begins after the member attains age sixty-five (65), and because the plan provides an immediately commencing straight life annuity payable both at age sixty-five (65) and the age of benefit commencement, the defined benefit dollar limitation shall be the lesser of paragraph (a) or (b) of this subsection:

(a) The actuarial equivalent (at the later age) of the defined benefit dollar limitation (adjusted pursuant to subsection (1) of this section if necessary), with actuarial equivalence computed using a five (5) percent interest rate assumption and the mortality table specified by the system actuary (and expressing the member's age based on completed calendar months as of the annuity starting date); or

(b) The defined benefit dollar limitation (adjusted pursuant to subsection (1) of this section if necessary), multiplied by the ratio of the annual amount of the adjusted immediately commencing straight life annuity pursuant to the plan at the member's annuity starting date to the annual amount of the adjusted immediately commencing straight life annuity pursuant to the plan at age sixty-five (65), both determined without applying the 415(b) limit. For this purpose, the adjusted immediately commencing straight life annuity pursuant to the plan at the member's annuity starting date shall be the annual amount of such annuity payable to the member, computed disregarding the member's accruals after age sixty-five (65) but including actuarial adjustments even if those actuarial adjustments are used to offset accruals, and the adjusted immediately commencing straight life annuity pursuant to the plan at age sixty-five (65) shall be the annual amount of the annuity that would be payable pursuant to the plan to a hypothetical member who is age sixty-five (65) and has the same accrued benefit as the member.

(5) If the benefit pursuant to the retirement system is other than an annual benefit, then the benefit shall be adjusted so that it is the equivalent of the annual benefit, using factors established in 26 C.F.R. 1.415(b).

(6) If the form of benefit without regard to the automatic benefit increase feature is not a straight life annuity or a qualified joint and survivor annuity, then subsection (5) of this section shall be applied by either reducing the section 415(b) limit applicable at the annuity starting date or adjusting the form of benefit to an actuarially equivalent amount determined using the assumptions established in 26 C.F.R. 1.415(b)-1(c)(2)(ii) that takes into account the additional

benefits pursuant to a benefit paid in a form to which 26 U.S.C. 417(e)(3) does not apply, a monthly benefit, the actuarially equivalent straight life annuity benefit that is the greater of (or the reduced 415(b) limit applicable at the annuity starting date that is the "lesser of", if adjusted in accordance with the assumptions established in paragraph (a) or (b) of this subsection):

(a) The annual amount of the straight life annuity (if any) payable to the member pursuant to the retirement system commencing at the same annuity starting date as the form of benefit to the member; or

(b)1. The annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the form of benefit payable to the member, computed using a five (5) percent interest assumption (or the applicable statutory interest assumption) and:

2.a. For limitation years prior to January 1, 2009, the applicable mortality tables described in 26 C.F.R. 1.417(e)-1(d)(2); and

b. For limitation years after December 31, 2008, the applicable mortality tables described in 26 U.S.C. 417(e)(3)(B).

(7) Effective on and after January 1, 2009, for purposes of applying the 415(b) limit to a member:

(a) A member's applicable 415(b) limit shall be applied to the member's annual benefit in the member's first limitation year without regard to any automatic cost of living adjustments; and

(b)1. To the extent that the member's annual benefit equals or exceeds the 415(b) limit, the member shall no longer be eligible for cost of living increases until the benefit plus the accumulated increases are less than the 415(b) limit;

2. In any subsequent limitation year, a member's annual benefit, including any automatic cost of living increases, shall be tested pursuant to the then applicable 415(b) limit including any adjustment to the 26 U.S.C. 415(b)(1)(A) dollar limit pursuant to 26 U.S.C. 415(d) and 26 C.F.R. 1.415(b).

Section 3. Participation in Other Qualified Plans: Aggregation of Limits. (1) The 415(b) limit with respect to any member who has ever been a member in any other defined benefit plan as defined in 26 U.S.C. 414(j) maintained by the member's employer in a retirement system shall apply as if the total benefits payable from all these defined benefit plans in which the member has been a member were payable from one (1) plan.

(2) The 415(c) limit with respect to any member who has ever been a member in any other defined contribution plan as defined in 26 U.S.C. 414(i) maintained by the member's employer in a retirement system shall apply as if the total annual additions under all these defined contribution plans in which the member has been a member were payable from one (1) plan.

Section 4. Effect on Members. (1) Benefit increases resulting from the increase in the limitations of 26 U.S.C. 415(b) shall be provided to all current and former members, with benefits limited by 26 U.S.C. 415(b), who have an accrued benefit pursuant to the plan immediately prior to the effective date.

(2) These benefit increases shall not be provided to current and former members who have an accrued benefit resulting from a benefit increase solely as a result of the increases in limitations pursuant to 26 U.S.C. 415(b).

Section 5. Benefits Not Taken into Account for 415(b) Limit. The benefits established in this section shall not be taken into account in applying these limits:

(1) Any ancillary benefit that is not directly related to retirement income benefits; and

(2) That portion of any joint and survivor annuity that constitutes a qualified joint and survi-

vor annuity.

Section 6. 415(c) Limit. Except as provided in Section 7 of this administrative regulation, after-tax member contributions or other annual additions with respect to a member shall not exceed the lesser of \$40,000 (as adjusted pursuant to 26 U.S.C. 415(d)) or 100 percent of the member's compensation. (1)(a) Annual additions shall be defined to mean the sum (for any year) of employer contributions to a defined contribution plan, post-tax member contributions, and forfeitures credited to a member's individual account.

(b) Member contributions shall be determined without regard to rollover contributions and to picked-up employee contributions that are paid to a defined benefit plan.

(2) For purposes of applying the 415(c) limits only, the definition of compensation, if applicable, shall be compensation actually paid or made available during a limitation year, except as noted in subsection (3) of this section and as permitted by 26 C.F.R. 1.415(c)-2, except, that member contributions picked up pursuant to 26 U.S.C. 414(h), shall not be treated as compensation.

(3) Unless another description of compensation that is permitted by 26 C.F.R. 1.415(c)-2 is specified by a retirement system, compensation shall be described as wages within the meaning of 26 U.S.C. 3401(a) and all other payments of compensation to an employee by an employer for which the employer is required to furnish the employee a written statement pursuant to 26 U.S.C. 6041(d), 6051(a)(3) and 6052 and shall be determined without regard to any rules pursuant to 26 U.S.C. 3401(a) that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in 26 U.S.C. 3401(a)(2)).

(a)1. For limitation years beginning on and after January 1, 1998, compensation shall also include amounts that would otherwise be included in compensation but for an election pursuant to 26 U.S.C. 125(a), 402(e)(3), 402(h)(1)(B), 402(k), or 457(b).

2. For limitation years beginning on and after January 1, 2001, compensation shall also include any elective amounts that are not includible in the gross income of the employee by reason of 26 U.S.C. 132(f)(4).

(b) For limitation years beginning on and after January 1, 2009, compensation for the limitation year shall also include compensation paid by the later of two and one-half (2 1/2) months after an employee's severance from employment or the end of the limitation year that includes the date of the employee's severance from employment if:

1. The payment is:

- a. Regular compensation for services during the employee's regular working hours;
- b. Compensation for services outside the employee's regular working hours, such as overtime or shift differential; or
- c. Commissions, bonuses, or other similar payments; and

2. Absent a severance from employment, the payments would have been paid to the employee while the employee continued in employment with unused accrued bona fide sick, vacation, or other leave that the employee would have been able to use if employment had continued.

(c) Back pay, within the meaning of 26 C.F.R. 1.415(c)-2(g)(8), shall be treated as compensation for the limitation year to which the back pay relates to the extent the back pay represents wages and compensation that would otherwise be included pursuant to this description.

(d) If the annual additions for any member for a plan year exceed the 415(c) limit, the excess annual addition shall be corrected as permitted pursuant to the Employee Plans Compliance Resolution System (or similar IRS correction program).

Section 7. Service Purchases Pursuant to 26 U.S.C. 415(n). (1) Effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, if a member makes one (1) or more contributions to purchase permissive service credit in a retirement system, then the requirements of 26 U.S.C. 415(n) shall be treated as met only if:

(a) The requirements of 26 U.S.C. 415(b) are met, determined by treating the accrued benefit derived from all these contributions as an annual benefit for purposes of the 415(b) limit; or

(b) The requirements of 26 U.S.C. 415(c) are met, determined by treating all these contributions as annual additions for purposes of the 415(c) limit.

(2) For purposes of applying this section, a retirement system shall not fail to meet the reduced limit pursuant to 26 U.S.C. 415(b)(2)(C) solely by reason of this section and shall not fail to meet the percentage limitation pursuant to 26 U.S.C. 415(c)(1)(B) solely by reason of this section.

(3)(a) Permissive service credit shall consist of service credit:

1. Recognized by a retirement system for purposes of calculating a member's benefit in a retirement system;

2. The member has not received in a retirement system; and

3. That the member may receive only by making a voluntary additional contribution, in an amount determined pursuant to a retirement system, which does not exceed the amount necessary to fund the benefit attributable to the service credit.

(b) Effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, the term may include service credit for periods for which there is no performance of service, and, notwithstanding paragraph (a)2 of this subsection, may include service credited in order to provide an increased benefit for service credit that a member is receiving in a retirement system.

(4) The retirement system shall fail to meet the requirements of this section if:

(a) More than five (5) years of nonqualified service credit are taken into account for purposes of this subparagraph; or

(b) Any nonqualified service credit is taken into account pursuant to this section before the member has at least five (5) years of participation in a retirement system.

(5) In the case of service described in Section 1(7)(a), (b), or (c) of this administrative regulation, the service shall be nonqualified service if recognition of the service would cause a member to receive a retirement benefit for the same service from more than one (1) plan.

(6) In the case of a trustee-to-trustee transfer after December 31, 2001, to which 26 U.S.C. 403(b)(13)(A) or 26 U.S.C. 457(e)(17)(A) applies, without regard to if the transfer is made between plans maintained by the same employer:

(a) The limitations of subsection (4) of this section shall not apply in determining if the transfer is for the purchase of permissive service credit; and

(b) The distribution rules applicable pursuant to federal law to a retirement system shall apply to these amounts and any benefits attributable to these amounts.

(7)(a) For an eligible member, the 415(c) limit shall not be applied to reduce the amount of permissive service credit that may be purchased to an amount less than the amount that was allowed to be purchased pursuant to the terms of the retirement system as in effect on August 5, 1997.

(b) For purposes of this subsection, an eligible member shall be an individual who first became a member in the retirement system before January 1, 1998.

Section 8. Modification of Contributions for 26 U.S.C. 415(c) and 415(n) Purposes. The retirement system may modify a request by a member to make a contribution to a retirement system if the amount of the contribution would exceed the limits established in 26 U.S.C. 415 by

using the following methods:

(1) If the law requires a lump sum payment for the purchase of service credit, the retirement system may establish a periodic payment plan for the member to avoid a contribution in excess of the limits established in 26 U.S.C. 415(c) or 415(n).

(2) If payment pursuant to section (1) of this subsection shall not avoid a contribution in excess of the limits established in 26 U.S.C. 415(c) or 415(n), the retirement system shall either reduce the member's contribution to an amount within the limits of those sections or refuse the member's contribution.

Section 9. Repayments of Cashouts. Any repayment of contributions, including interest thereon, to the retirement system with respect to an amount previously refunded upon a forfeiture of service credit under the retirement system or another governmental plan maintained by the Commonwealth or a local government within the Commonwealth shall not be taken into account for purposes of the 415(b) or (c) limits. (28 Ky.R. 2113; 2324; eff. 5-16-2002; 35 Ky.R. 1822; 2406; eff. 6-5-2009; 37 Ky.R. 1327; 1968; eff. 3-1-2011; 39 Ky.R. 1749; 1995; eff. 5-3-2013; Crt eff. 7-3-2019.)